

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Magdalena Azmitia	Team: Squad #11	CCRB Case #: 201801845	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 03/02/2018 12:19 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 9/2/2019	EO SOL 9/2/2019	
Date/Time CV Reported Fri, 03/02/2018 4:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/08/2018 11:10 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM William Rivera	23360	923043	075 PCT
2. POM Jay Rivera	03882	935599	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Warren Hutchinson	21648	954952	075 PCT
2. POM Bibek Thapa	28719	955572	075 PCT
3. SGT Michael Wischhusen	1172	931437	075 PCT
4. POF Jeanne Mounsey	01030	928578	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jay Rivera	Force: Police Officer Jay Rivera used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM William Rivera	Force: Police Officer William Rivera used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Jay Rivera	Force: Police Officer Jay Rivera used physical force against § 87(2)(b)	§ 87(2)(b)

### Case Summary

On March 2, 2018, Sgt. Michael Wischhusen of the 75<sup>th</sup> Precinct filed this complaint on behalf of § 87(2)(b).

On March 2, 2018, at approximately 12:19 P.M., § 87(2)(b) was at his mother § 87(2)(b) home at § 87(2)(b) in Brooklyn, and the two were having an argument. § 87(2)(b) called the police to have § 87(2)(b) removed from the property. As he was leaving, § 87(2)(b) was stopped in the foyer of the home by PO Jay Rivera and PO William Rivera, both of the 75<sup>th</sup> Precinct. PO Jay Rivera pushed § 87(2)(b) into the house and held him against a wall. § 87(2)(b) pushed back, and both officers took him to the ground (**Allegations A and B: Force – § 87(2)(g)**). PO Jay Rivera placed handcuffs on § 87(2)(b) and manipulated the handcuffs until they twisted § 87(2)(b)'s wrist and caused him pain (**Allegation C: Force – § 87(2)(g)**).

§ 87(2)(b) provided video of a portion of the incident, and body worn camera footage was obtained.

§ 87(2)(e), § 87(2)(f)

### Findings and Recommendations

**Allegation (A) Force: Police Officer Jay Rivera used physical force against § 87(2)(b)**

**Allegation (B) Force: Police Officer William Rivera used physical force against § 87(2)(b)**

It is undisputed that in the course of responding to § 87(2)(b), PO Jay Rivera and PO William Rivera took § 87(2)(b) to the ground.

§ 87(2)(b) testified that he and § 87(2)(b) had been arguing for approximately 15 minutes before she stated that she was going to call the police to have him removed from the home [BR 04]. Approximately five minutes later, § 87(2)(b) was leaving the location on his own when he was prevented from leaving by PO Jay Rivera and PO William Rivera, who told him that he could not leave due to an investigation. PO Jay Rivera grabbed his arm and held him against the wall, and § 87(2)(b) tried repeatedly to leave the location by sliding out from under PO Jay Rivera's hold, but was unable to do so. § 87(2)(b) became frustrated and pushed PO Jay Rivera's arm, causing him to stumble back until his back hit the opposite wall. § 87(2)(b) put his hands in the air and said he was not resisting. PO William Rivera grabbed § 87(2)(b)'s legs from behind around his knees, and PO Jay Rivera pulled § 87(2)(b)'s arms down and grabbed his shoulders. § 87(2)(b) was taken to the ground and landed on his stomach, after which he was placed in handcuffs and remained on the ground until EMS and a supervisor arrived.

In her unverified telephone statement to the CCRB, § 87(2)(b) stated that she had called the police and said that she and her son were arguing and that she wanted him out of the house [BR 07]. Upon arriving at the location, PO Jay Rivera pushed § 87(2)(b) against a wall and held him there for approximately 5-10 minutes. § 87(2)(b) tried to release himself from PO Jay Rivera's hold by pushing him back, and was then taken to the ground. PO Jay Rivera had taken hold of § 87(2)(b)'s feet and back, while PO William Rivera had an arm around his neck from behind as he was being taken to the ground. § 87(2)(b) hit his head on the wall as he was taken down, then landed on his stomach, after which he was placed in handcuffs. Several attempts were made to obtain a sworn statement from § 87(2)(b) who remained uncooperative with the investigation [BR 31].

§ 87(2)(b)'s uncle § 87(2)(b) was also present during the incident, and his unverified telephone statement to the CCRB was consistent with that of § 87(2)(b) with the following exceptions [BR 05]. While PO Jay Rivera was holding § 87(2)(b) against the wall, § 87(2)(b) stated that PO Jay Rivera was choking him and tried to move his hands away. PO Jay Rivera responded by throwing § 87(2)(b) against the wall. PO Jay Rivera and § 87(2)(b) began fighting, with § 87(2)(b) pushing PO Jay Rivera back, causing him to stumble back and break the glass in a window behind him. PO Jay Rivera and PO William Rivera took § 87(2)(b) to the ground, with PO Jay Rivera grabbing his upper body and PO William Rivera grabbing his legs. § 87(2)(b) landed on his chest on the ground. Several attempts were made to obtain a sworn statement from § 87(2)(b) who remained uncooperative with the investigation [BR 32].

§ 87(2)(b)'s fiancée § 87(2)(b) was also present for the incident, and her unverified telephone statement was consistent with that of § 87(2)(b) and § 87(2)(b) with the following exceptions [BR 06]. § 87(2)(b) said that he was going to leave, and the officers told him to hold on. § 87(2)(b) tried to pass them and leave the house, and PO William Rivera used his forearm to push § 87(2)(b) against the wall, stating, "You're not going anywhere." § 87(2)(b) asked the officers to let him leave. PO William Rivera repeatedly pushed § 87(2)(b) back against the wall while PO Jay Rivera held his arms down. After some time, § 87(2)(b) pushed their hands off of him, and PO Jay Rivera stumbled back slightly. § 87(2)(b) was then taken to the ground, with PO Jay Rivera grabbing his upper body. § 87(2)(b) could not recall if PO William Rivera was making contact with § 87(2)(b) as he was brought to the ground and landed on his chest. Several attempts were made to obtain a sworn statement from § 87(2)(b) who remained uncooperative with the investigation [BR 33].

In his testimony, PO Jay Rivera stated that he and PO William Rivera responded to a call for an extremely violent male emotionally disturbed person at the location [BR 16]. The radio run also noted that the individual in question had a mental history. The officers entered the location and § 87(2)(b) whom they believed might be the male in question because he was the only male inside the home. § 87(2)(b) and § 87(2)(b) were screaming at each other when the officers arrived. PO Jay Rivera and PO William Rivera stopped § 87(2)(b) to engage him and § 87(2)(b) with PO Jay Rivera standing in front of § 87(2)(b) telling him to wait a second, and holding up his hands to gesture for him to stop. § 87(2)(b) became combative and slapped PO Jay Rivera's hand away and repeatedly told the officers "Don't touch me." PO Jay Rivera believed that he may have put a hand on § 87(2)(b)'s chest, without applying pressure, to keep him from leaving the scene. The officers were preventing § 87(2)(b) from leaving because he was a possible emotionally disturbed person who may have been a danger to himself or others and, if that was the case, the officers would need to obtain care for him. § 87(2)(b) repeatedly asked § 87(2)(b) for his cell phone, which PO Jay Rivera did not want § 87(2)(b) to have at the time because he was still acting in a violent manner, and PO Jay Rivera did not want him to have a weapon. PO Jay Rivera told § 87(2)(b) not to give § 87(2)(b) the phone, and § 87(2)(b) attempted to grab it. PO Jay Rivera stopped him from doing so, at which point § 87(2)(b) grabbed his hand. PO Jay Rivera grabbed § 87(2)(b)'s jacket with his right hand, but noted that due to their close proximity he would not be able to rear handcuff § 87(2)(b). PO Jay Rivera and PO William Rivera took § 87(2)(b) to the ground, with PO Jay Rivera holding onto § 87(2)(b)'s jacket and right arm and PO William Rivera holding onto his left arm. PO Jay Rivera noted that § 87(2)(b)'s landing on the floor was a controlled takedown and that it was not a hard fall, and § 87(2)(b) did not complain of any pain as he was being taken down or as he

made contact with the ground. § 87(2)(b) was placed in handcuffs, and a supervisor and an ambulance were then called to the scene.

PO William Rivera's testimony to the CCRB was consistent with that of PO Jay Rivera with the exception that PO William Rivera largely did not recall the details of the incident [BR 23]. As a potentially emotionally disturbed individual, § 87(2)(b) was not free to leave the location although he was trying to, and PO William Rivera stood next to him to keep him from leaving. He did not recall whether any physical contact was required to keep § 87(2)(b) from leaving. PO Jay Rivera spoke with § 87(2)(b) and tried to question him. § 87(2)(b) put his hands on PO Jay Rivera several times, although he did not recall where on PO Jay Rivera § 87(2)(b) put his hands or whether he pushed PO Jay Rivera. In response, PO William Rivera and PO Jay Rivera conducted a controlled takedown of § 87(2)(b). PO William Rivera was in contact with § 87(2)(b)'s upper body during the takedown, although he did not recall specifically what part of § 87(2)(b) he was touching. He did not recall where PO Jay Rivera was touching § 87(2)(b) during the takedown. PO William Rivera did not recall where on his body § 87(2)(b) landed, or how he was positioned once he was on the ground.

Redacted footage from PO Jay Rivera and PO William Rivera's body worn cameras was obtained from the NYPD, although both videos become dark or otherwise obscured in some manner during the movement of takedown [BR 27, 28]. As a result of both this and the redaction, the specific movements of the takedown and the events preceding it are not visible in the body worn cameras footage.



PO J. Rivera BWC.mp4

[BR 27]

Video 1 of 1

Video footage obtained from PO Jay Rivera's body worn camera, shows the conversation that took place between § 87(2)(b) and the officers before the takedown occurred. At 37 seconds, § 87(2)(b)'s hand enters the frame from the bottom and is briefly seen pushing PO Jay Rivera's hands away. PO Jay Rivera's right hand is then seen holding onto § 87(2)(b)'s jacket, and PO Jay Rivera is heard saying "Don't raise your hands," as § 87(2)(b) asks why PO Jay Rivera is grabbing him.

As noted above, § 87(2)(b) stated in his testimony to the CCRB that he pushed PO Jay Rivera with enough force to cause him to stumble backwards, although the push is not visible in video footage due to redactions.

In the 911 call related to NYPD Event Information D18030211486, § 87(2)(b) is heard telling the operator that § 87(2)(b) "is doing a lot of things to [her]," and saying that § 87(2)(b) has a mental history [BR 11]. When asked if § 87(2)(b) is being violent, § 87(2)(b) replied, "Not yet. But he's saying violent things to me." § 87(2)(b) also stated to the operator that she did not know if § 87(2)(b) had any weapons. The Event Information corroborates the information listed above [NYPD 07].

An AIDED report prepared for § 87(2)(b) by PO Jay Rivera noted that § 87(2)(b) was combative and placing himself and others in the vicinity in danger [NYPD 08]. The report also noted that § 87(2)(b) stated that § 87(2)(b) had a mental history, although it was unknown what condition he suffered from.

§ 87(2)(b)'s medical records from § 87(2)(b), to which he was taken by EMS, list the chief complaint as aggressive behavior and do not list any injuries resulting from the takedown [Privileged Documents 02].

NYPD Patrol Guide procedure 221-01 outlines the circumstances under which force may be used, and states that force may be used to ensure the safety of a member of service or a third person when it is reasonable to place a person in custody or prevent escape from custody [BR 35]. The Patrol Guide also notes that force may be used when de-escalation techniques, used to stabilize the situation until more resources are available, are unsuccessful.

Once § 87(2)(b) was on the ground and placed in handcuffs, the officers requested their supervisor to the scene. The officers did not request EMS to respond, as EMS was already en route based on the nature of § 87(2)(b) report to the 911 operator. While on the ground, § 87(2)(b) claimed that he had sustained an injury to his wrist due to the handcuffs being twisted, and requested medical attention. Although § 87(2)(b) was taken to the hospital by EMS who had initially responded to a radio run of a potential emotionally disturbed person, he voluntarily went to the hospital for further evaluation of his physical injury.

**Allegation (C) Force: Police Officer Jay Rivera used physical force against § 87(2)(b)**

was cut. At the time, he believed that PO Jay Rivera had broken his wrist. § 87(2)(b) also testified that approximately one week after the incident, § 87(2)(b) went to the clinic at § 87(2)(g) because of a twitch in his left wrist. His doctor said that his wrist may have nerve damage. At the time of his interview § 87(2)(b) was awaiting testing to confirm the diagnosis. § 87(2)(b) did not object to being taken to the hospital at the time of the incident.

§ 87(2)(b) stated in her unverified telephone statement that while § 87(2)(b) was on the ground, PO Jay Rivera had his knees in § 87(2)(b)'s back and repeatedly twisted his arm behind his back [BR 07]. § 87(2)(b) said that PO Jay Rivera was hurting his arm and told him to stop.

In his unverified telephone statement to the CCRB, § 87(2)(b) stated that § 87(2)(b) was not placed in handcuffs, but PO Jay Rivera held onto his left wrist and began twisting it [BR 05]. § 87(2)(b) asked PO Jay Rivera to release his wrist because the bone "had popped".

In her unverified telephone statement to the CCRB, § 87(2)(b) stated that after § 87(2)(b) was taken to the ground, PO Jay Rivera pulled § 87(2)(b)'s arms behind his back and placed him in handcuffs [BR 06]. § 87(2)(b) was unable to see whether PO Jay Rivera twisted § 87(2)(b)'s wrist or the handcuff with his left hand, but noted that § 87(2)(b)'s wrist was twisted while PO Jay Rivera's right hand remained on § 87(2)(b)'s right arm. PO William Rivera placed his knees on § 87(2)(b)'s legs, keeping one hand on § 87(2)(b)'s belt and the other on his leg or on the floor. § 87(2)(b) repeatedly asked PO Jay Rivera to stop twisting § 87(2)(b)'s wrist, but he said that he was not doing anything.

§ 87(2)(b) who was a FDNY EMT at the time of the incident, responded to the location, and testified that when he arrived, he saw § 87(2)(b) in handcuffs on the ground in the home [BR 21]. § 87(2)(b) was aggressive and screaming that he had not done anything. § 87(2)(b) did not recall whether any of the officers were making physical contact with § 87(2)(b). § 87(2)(b) was complaining about wrist pain and the handcuffs being too tight, although there did not appear to be any injuries on him. § 87(2)(b) was standing within touching distance of § 87(2)(b) and did not recall seeing any officers touching § 87(2)(b)'s wrists. In the ambulance, an officer loosened or removed § 87(2)(b)'s handcuffs, although § 87(2)(b) did not recall who did so. § 87(2)(b) observed redness and swelling on § 87(2)(b)'s wrists, and § 87(2)(b) was given an ice pack. § 87(2)(b) did not observe any obvious deformities in § 87(2)(b)'s wrists.

§ 87(2)(b) a FDNY EMT who responded to the scene with § 87(2)(b) testified to the CCRB that § 87(2)(b) was standing in the doorway of § 87(2)(b) and was in handcuffs [BR 22]. Officers were trying to remove § 87(2)(b) from the residence, but he did not want to leave and was struggling. EMT § 87(2)(b) first did not recall whether § 87(2)(b) was complaining of any pain, but later noted that he may have said his hand was hurting. EMT § 87(2)(b) did not recall if § 87(2)(b) said what had caused the pain, and EMT § 87(2)(b) noted that § 87(2)(b) may have said his handcuffs were too tight and he may have been given an ice pack. EMT § 87(2)(b) did not recall seeing any deformities or major injuries on § 87(2)(b)'s wrists, and noted that redness is standard when the individual is wearing handcuffs.

PO Jay Rivera testified to the CCRB that once § 87(2)(b) was on the ground, the officers placed him in handcuffs, with PO Jay Rivera cuffing his right hand and PO William Rivera cuffing his left [BR 16]. § 87(2)(b) was still moving his whole body as he was on the ground, and PO Jay Rivera told him to stay still. § 87(2)(b) was ultimately moved onto his right side to prevent him from moving, although he continued to do so. PO Jay Rivera held onto the chain of the handcuffs to prevent § 87(2)(b) from moving. § 87(2)(b) repeatedly said, "Let go

of my wrists” and “Stop touching my wrists,” although PO Jay Rivera had no contact with § 87(2)(b)s wrists. PO Jay Rivera noted that nothing was happening with § 87(2)(b)s wrists and there was no injury to his wrists. In addition to holding onto the handcuff chain for less than five minutes, he held onto the top part of § 87(2)(b)s right arm. Eventually § 87(2)(b) stopped moving, and no further contact was made with his hands or wrists, although § 87(2)(b) continued to say that PO Jay Rivera had broken his wrist.

PO William Rivera’s testimony was largely consistent with that of PO Jay Rivera, with the following exceptions [BR 23]. Once § 87(2)(b) was on the ground, he would not give the officers his hands in order to be handcuffed. Once he was handcuffed, § 87(2)(b) began kicking his legs, and PO William Rivera kept his hands on § 87(2)(b)s legs to prevent him from kicking further. PO Jay Rivera also had contact with § 87(2)(b) although PO William Rivera did not recall where. After § 87(2)(b) was on the ground and placed in handcuffs, he began to complain of wrist pain, although PO William Rivera did not recall what § 87(2)(b) claimed was causing the pain. He did not recall if he or PO Jay Rivera had any contact with § 87(2)(b)s wrists. He did not recall seeing redness, swelling, lacerations, or other injuries on § 87(2)(b)s wrists.

PO Warren Hutchinson of the 75<sup>th</sup> Precinct, who also responded to the location, testified that when he and his partner PO Bibek Thapa arrived, § 87(2)(b) was already in custody [BR 19]. § 87(2)(b) was in handcuffs on the floor inside the vestibule of the location and was lying on his side. At the time that PO Hutchinson arrived he was screaming and kicking and flailing his legs. PO Jay Rivera and PO William Rivera, were holding § 87(2)(b)s wrists and arms. PO Hutchinson did not recall seeing officers holding onto § 87(2)(b)s handcuffs, or whether anyone was securing his legs. § 87(2)(b) complained that his wrist hurt. PO Hutchinson was approximately one foot away from § 87(2)(b) and noted that § 87(2)(b)s wrists appeared to be fine and that no officers were twisting his wrists or pulling on his handcuffs. PO Hutchinson later escorted § 87(2)(b) to § 87(2)(b), where an x-ray was performed to look for any fractures or sprains in § 87(2)(b)s wrists. PO Hutchinson was informed by medical personnel that there were no injuries to § 87(2)(b)s wrists. He did not observe any injuries, bruising, or swelling on § 87(2)(b)s wrists during their hours in the hospital.

§ 87(2)(g)

PO Thapa did not recall what PO Jay Rivera and PO William Rivera were doing when he arrived or whether they were making physical contact with § 87(2)(b). He did not see whether there were any problems with § 87(2)(b)s handcuffs. § 87(2)(b) complained of wrist pain in the ambulance. PO Thapa did not recall whether § 87(2)(b) stated how he sustained injury to his wrist or whether § 87(2)(b) received any treatment in the ambulance. He did not look at § 87(2)(b) during the transport or observe any injuries. He did not see officers have any physical contact with § 87(2)(b) aside from escorting him to the ambulance.

Sgt. Wischhusen responded to § 87(2)(b) as well, with his operator PO Jeanne Mounsey, and testified to the CCRB that § 87(2)(b) was handcuffed and lying on his side, with PO Jay Rivera and PO William Rivera securing him [BR 18]. Sgt. Wischhusen, who was at one point within three feet of § 87(2)(b) did not recall specifically how PO William Rivera and PO Jay Rivera were securing him. He did not see either officer make contact with § 87(2)(b)s wrists or manipulate the handcuffs. § 87(2)(b) complained about his wrist in Sgt. Wischhusen’s presence, making statements such as “They were trying to break my wrist” and “My wrist is broken.” Sgt. Wischhusen did not observe any injuries to § 87(2)(b) or to his wrists. Sgt. Wischhusen was present while EMS examined § 87(2)(b)s wrists and gave him an ice pack.

PO Jeanne Mounsey's testimony to the CCRB was inconsistent with that of Sgt. Wischhusen in that she did not recall many details of the incident [BR 17]. She testified that when she arrived, § 87(2)(b) was already being loaded into an ambulance. She did not recall whether § 87(2)(b) complained of any pain at the location. Officers were standing over and holding onto § 87(2)(b) when she arrived, but PO Mounsey did not recall which officers or where they were holding him. PO Mounsey did not observe any officers twisting § 87(2)(b)'s arms or making any movements with the handcuffs. § 87(2)(b) was taken to § 87(2)(b), although PO Mounsey was unaware of whether he was taken because of a physical injury or for psychiatric reasons. PO Mounsey did not recall speaking with § 87(2)(b) at any point, or seeing any signs of injury on him.

§ 87(2)(g)

The AIDED report prepared for § 87(2)(b) addressed only his mental state and did not mention any injury to § 87(2)(b)'s wrist [NYPD 08].

EMS Electronic Prehospital Care Report obtained from FDNY notes that EMS was dispatched for an emotionally disturbed person [Privileged Documents 01]. § 87(2)(b) was combative with NYPD and was handcuffed for safety. He complained of pain to his left wrist, and received a cold application to his wrist. No deformities were found.

§ 87(2)(b)'s medical records from § 87(2)(b) list his chief complaint as aggressive behavior [Privileged Documents 02]. He complained of left wrist pain after being handcuffed, and his assessment included joint pain, redness, and tenderness on left wrist. An x-ray of § 87(2)(b)'s left wrist was performed and was negative for fracture or dislocation. The discharge instructions list the diagnosis as wrist pain.

Although § 87(2)(b) stated that he went to § 87(2)(g) for follow-up regarding his wrist injury, his medical records obtained from the aforementioned institution from § 87(2)(b) list no visits regarding wrist pain or injury [Privileged Documents 03]. § 87(2)(b) has been to § 87(2)(g) since the incident for other unrelated injuries and conditions but has not been examined, undergone testing, or received treatment for his wrist.

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party [BR 24].
- PO Jay Rivera has been a member of service for 14 years and has been a subject in 22 CCRB complaints with 53 allegations, of which six have been substantiated.



- Case #201300926 involved two substantiated allegations of a stop and a search of a person. The Board recommended Command Discipline B, which the NYPD has not implemented.
- Case #201305267 involved four substantiated allegations of a stop, threat of summons, refusal to provide name and shield number, and failure to prepare a memo book entry. The Board recommended Command Discipline B, which the NYPD implemented.
- § 87(2)(g) [REDACTED]
- PO William Rivera has been a member of service for 20 years and has been a subject of three CCRB complaints and three allegations, none of which were substantiated.

**Mediation, Civil and Criminal Histories**

- This complaint was not eligible for mediation.
- On August 28, 2018, a request to determine if a Notice of Claim was filed was submitted; confirmation from the Office of the New York City Comptroller will be forwarded upon receipt [BR 26].
- § 87(2)(c) (impair contract awards or CBAs), § 87(2)(b) [REDACTED]

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Squad No.: 11

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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